

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROSEMARIE OZBAKIR and ALI DEMIR,

Plaintiffs,

v.

DANIEL J. SCOTTI, JR., MARCUS & MILLICHAP
REAL ESTATE INVESTMENT BROKERAGE
COMPANY, GLEN KUNOFSKY, ANDREW R. DORF,
SCOTT DRAGOS, CHRIS ZORBAS, PGP
VALUATION, INC., BRUCE D. COLEMAN,
SOVEREIGN JF, LLC, SOVEREIGN JF, SPE
MANAGER, INC., EUREKA PETROLEUM, INC.,
TIBAROM, INC., ROCHESTER LUBE, LLC,
SAMUEL E. PEARSON, III, DEBORAH PICKETT, and
PAUL MORABITO,

Defendants.

**AFFIDAVIT OF
CAROLYN G. NUSSBAUM
IN SUPPORT OF MOTION TO
DISMISS THE COMPLAINT**

Case No. 09-cv-6460L

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

CAROLYN G. NUSSBAUM, being duly sworn, deposes and says:

1. I am attorney admitted to practice before this Court, and a member of Nixon Peabody, LLP, attorney of record for Defendants Sovereign JF, LLC and Sovereign JF, SPE Manager, Inc. (collectively, "Sovereign").

2. I make this affidavit in support of Sovereign's motion to dismiss the complaint and all claims asserted against either of them by plaintiffs Rosemarie Ozbakir and Ali Demir ("Plaintiffs") based upon Plaintiffs' failure to state a valid claim as a matter of law, pursuant to Federal Rules of Civil Procedure 8, 9(b) and 12(b)(6).

3. The Court is also asked to take judicial notice of the following:

- a) Attached as **Exhibit 1** is a true and correct copy of Ross Waldrop, Sr., Federal Deposit Insurance Corporation, Quarterly Banking Profile Fourth Quarter 2007, 2 FDIC QUARTERLY 1, 1-22 (2008).

- 2 -

- b) Attached as **Exhibit 2** is a true and correct copy of Business Cycle Dating Committee, National Bureau of Economic Research, *Determination of the December 2007 Peak in Economic Activity* (Dec. 11, 2008), <http://www.nber.org/cycles/dec2008.html>.
- c) Attached as **Exhibit 3** is a true and correct copy of The Conference Board, *The Conference Board Leading Economic Index (LEI) for the U.S. Declines Again* (Apr. 20, 2009), http://www.conference-board.org/pdf_free/economics/bci/noRest.pdf.
- d) Attached as **Exhibit 4** is a true and correct copy of Richard Curtin, University of Michigan/Reuters Surveys of Consumers, *Preliminary Results from November 2007 Survey* (2007), <http://www.sca.isr.umich.edu/documents.php?c=r>.
- e) Attached as **Exhibit 5** is a true and correct copy of Richard Curtin, University of Michigan/Reuters Surveys of Consumers, *November 2007 Survey Results* (2007), <http://www.sca.isr.umich.edu/documents.php?c=r>.
- f) Attached as **Exhibit 6** is a true and correct copy of Carl Steidtmann, Deloitte Investment Consulting Services, *Economic & Market Review, Fourth Quarter 2007* (Jan.17, 2008), http://www.deloitte.com/dtt/cda/doc/content/dtt_dr_emr4q012408.pdf.
- g) Attached as **Exhibit 7** is a true and correct copy of MIT Center for Real Estate, *Moody's/REAL Commercial Property Price Index (CPPI)* (Mar. 23, 2009), <http://web.mit.edu/cre/research/credl/rca.html>.

- 3 -

- h) Attached as **Exhibit 8** is a true and correct copy of Lingling Wei, *Commercial Property Faces Crisis*, WALL ST. J., Mar. 26, 2009, at A1.
- i) Attached as **Exhibit 9** is a true and correct copy of Richard Parkus, Deutsche Bank, *Commercial Real Estate Outlook Q1 2009: Commercial Real Estate at the Precipice* (Mar. 3, 2009), linked by the Wall Street Journal to the online version of the article attached as Exhibit 8, at
<http://online.wsj.com/documents/CREOutlook20090325.pdf>.

4. Sovereign asks this Court to take judicial notice of Exhibits 1 through 9 to establish the widely-known and undeniable fact that, beginning in the last quarter of 2007, the U.S. economy suffered a severe downturn, widely characterized as the worst since the Great Depression. This Court can, and should, take judicial notice of this reality under Federal Rule of Evidence 201(b).

/s/ Carolyn G. Nussbaum
Carolyn G. Nussbaum

Sworn to before me this
30th day of October, 2009.

/s/Kelly A. Badum
Notary Public, State of New York
Registration #: 01BA6163532
Qualified in Monroe County
Certificate Filed in Monroe County
Commission Expires 3/26/11